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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,072	05/10/2005	Andreas Van Eikeren	H01.2-11733	8652

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VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

LEWIS, RALPH A

ART UNIT PAPER NUMBER

3732

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/517,072

Applicant(s)

EIKEREN ET AL.

Examiner

Ralph A. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Objection to Improper Multiple Dependent Claim

Claim 14 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must be dependent on other claims in the alternative only. See MPEP § 608.01(n).

Objection to New Matter in Drawings

The proposed drawing filed April 17, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention.

The newly proposed Figure 1 introduces new matter into the specification that was not present when originally filed. More particularly, there is absolutely no support for the particular structure illustrated – e.g. the plungers 16 and 18 attached to one another at the proximal end, the X-shaped cross section of the plunger stems, the enlarged plate at the proximal ends of the barrels, the connection and shape between the barrels 12 and 14, the coupling structure between the barrels 12, 14 and the mixing chamber 20. There is no support for the proportions illustrated.

Applicant is required to cancel the new matter in the reply to this Office Action.

Rejections based on Prior Art

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5 and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Dragan (US 5,676,543).

Dragan discloses an addition reaction silicone (A-silicone) 10 that is applied to and covers a patient's teeth and which cross-links in a self cure manner. The applied material meets the broad limitation of protecting the surrounding gums and teeth from dental treatment means.

In response to the present rejection applicant argues the Dragan material is applied with an impression tray and cannot be applied with a cartridge due to its poor flowability. The examiner notes, that perhaps applicant has a point, but it is unclear what such an argument has to do with applicant's broadly claimed invention.

Applicant argues that Dragan prefers the use of condensation silicones rather than addition silicones. The examiner agrees, but notes nevertheless, that Dragan discloses the claimed material and its use.

Applicant also argues "that it is not stated anywhere" in the Dragan document that the materials should adhere to the gingiva. The examiner notes that neither do applicant's claims state such a limitation.

Claims 1-3, 5, 9, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Amstutz et al (US 4,559,013).

Amstutz et al disclose a protective addition reaction silicone (column 5, lines 14-15) that is applied to a patient's surrounding teeth and gums where it cross-links and self cures to produce an elastomeric material. The composition is a two-component system that is mixed together (column 5, lines 9 and 10). In regard to claims 5 and 13, the spreading at column 5, line 25 meets the "flow-on" limitation.

Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Drake (US 4,538,920).

Drake discloses a dual plunger syringe with mixing chamber for dispensing two component silicone materials (see column 4, line 65). It is noted that it appears from the claim that applicant is only claiming the syringe device and not the combination of the syringe device and material.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dragan (US 5,676,543).

Adjusting the ingredients so that the setting times fall within the ranges claimed would have been obvious to one of ordinary skill in the art as a matter of routine in practicing the Dragan invention. The use of a common prior art double barrel syringe to provide for such storage and mixing would have been obvious to one of ordinary skill in the art.

Claims 6-8, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amstutz et al (US 4,559,013).

Adjusting the ingredients so that the setting times fall within the ranges claimed would have been obvious to one of ordinary skill in the art as a matter of routine in practicing the Amstutz et al invention. The use of a common prior art double barrel syringe to provide for such storage and mixing would have been obvious to one of ordinary skill in the art.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drake (US 4,538,920) in view of Konings et al (US 5,371,162).

To the extent that the present claim requires an A-silicone in combination with the dispensing device, Konings et al is cited as teaching that addition cured silicones are well known in the dental art (note column 1, line 65). To have merely used the

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Drake silicone dispenser for conventional A-silicones as taught by Konings et al would have been obvious to the ordinarily skilled artisan.

Action Made Final


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (571) 272-4720.

R.Lewis
July 10, 2006


Ralph A. Lewis
Primary Examiner
AU 3732